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# TRANSCRIPT OF RECORD

## Supreme Court of the United States

**OCTOBER TERM, 1932**

## No. 388

LETCHER SPICER, BY SAM SPICER, GUARDIAN AND COMMITTEE, PETITIONER,

*vs.*

J. BRYAN SMITH, SPECIAL DEPUTY BANKING COMMISSIONER AND LIQUIDATING AGENT OF HARGIS BANK AND TRUST COMPANY

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE COMMONWEALTH OF KENTUCKY

**PETITION FOR CERTIORARI FILED SEPTEMBER 21, 1932**

**CERTIORARI GRANTED OCTOBER 24, 1932**

**(37,085)**

( )

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1932

# No.

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LETCHER SPICER, BY SAM SPICER, GUARDIAN AND COMMITTEE, PETITIONER,

*vs.*

J. BRYAN SMITH, SPECIAL DEPUTY BANKING COMMISSIONER AND LIQUIDATING AGENT OF HARGIS BANK AND TRUST COMPANY

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ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE COMMONWEALTH OF KENTUCKY

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[fol. 1] [Caption omitted]

[fol. 2]

## IN CIRCUIT COURT OF BREATHITT COUNTY

Letcher Spicer, by Sam Spicer, Committee, and Sam Spicer, Guardian and Committee for Letcher Spicer, Plaintiffs,

vs.

J. Bryan Smith, Special Deputy Banking Commissioner and Liquidating Agent of Hargis Bank & Trust Company, Defendants

Order in Vacation

Minute Entry—Oct. 19, 1931

Came this day plaintiff and filed their petition herein against the defendant herein, and summons and one copy issued thereon, this the 22nd day of Sept. 1931, and the same is now noted of record.

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In Circuit Court of Breathitt County

[Title omitted]

[fol. 3] Petition—Filed Sept. 22, 1931

The Plaintiff, Letcher Spicer by Sam Spicer, Committee and Guardian and Sam Spicer, Committee and Guardian for Letcher Spicer, incompetent, states that said Letcher Spicer was duly and regularly enlisted soldier in the army of the United States in the World War, and that while he was enlisted and engaged in said service, to-wit: on May 1, 1918, the Treasury department of the United States Bureau of War Risk Insurance, issued to him certificate No. 2253023, effective of that date, by which he was insured in the sum of Ten Thousand (10,000.00) Dollars, payable in case of death or total permanent disability in monthly installments of $57.50, a copy of said certificate is filed herewith and made part hereof and marked Exhibit "A" and the original will be filed if required by the court. Said insurance was granted

under an act entitled "An act to authorize the establishment of a bureau of War Risk Insurance in the Treasury Department, approved Sept. 2, 1914, and for other purposes, approved October 2, 1917, and subject in all respects to the provisions of such Act, or any amendments thereof, and of all regulations thereunder, now in force or hereafter adopted; that during this period of service the said Letcher Spicer became permanently disabled by total loss of his mind and is now confined in the United States Veterans' Hospital at Chillicothe, Ohio; that by an order duly and regularly made by the Breathitt County Court on the 29 day of September, 1919, the Plaintiff, Sam Spicer, was duly and regularly appointed the Guardian of said Letcher Spicer and duly qualified as such by taking the oath required by law [fol. 4] and executing bond, a certified copy of said order is filed herewith and is made part hereof, marked Exhibit "B".

Plaintiff's state that the Hargis Bank and Trust Company, a Corporation was duly incorporated under the Banking Laws of Kentucky and duly created as such, with power to engage in the banking business at Jackson, Kentucky, with powers to sue and be sued, contract and be contracted with, and was duly existing as such and engaged in the banking business at Jackson, Kentucky, on January 1st, 1920 and during the entire period from that time to the 5th day of February, 1930, at which time said Bank & Trust Company closed its doors; that after it closed its doors its assets and property of every kind was taken over by the Banking Department of the state of Kentucky and placed in charge of the defendant, J. Bryan Smith, as Special Deputy Banking Commissioner and Liquidating Agent of said Bank; and that said defendant now has in his hands and under his charge and in his possession the assets of every kind and character including money, securities, real estate and all assets and property of said Hargis Bank and Trust Company.

They state that at the time said Bank closed its doors and ceased to function, the plaintiff, Sam Spicer, Guardian of Letcher Spicer had on deposit in said Hargis Bank & Trust Company, the sum of $6,070.80, under contract with said bank, by which it agreed to pay the plaintiff interest thereon at the rate of 5% per annum, payable semi-annually, all of which money was derived from and paid by the United States Government to said Guardian as war risk insurance

and disability compensation awarded and due to his said ward and his said Cestui Qui Trust, to-wit: Letcher Spicer. That plaintiff has repeatedly demanded the payment of said Hargis Bank & Trust Company before it closed its doors and [fol. 5] that said Bank failed to pay any part thereof and that there is now due plaintiffs the sum of $6070.80 with six per cent per annum, interest thereon from January 1, 1930, until paid. The sum of $6070.80, includes interest accrued up to January 1, 1930, at the rate of 5%.

Plaintiffs state that under the laws of the United States, said Trust Fund is a preferred claim against all of the property and assets of every kind of the Hargis Bank & Trust Company owned by it at the date that it closed its doors and is a preferred claim against all of the assets, notes, choses in action, money and real estate of said bank which came into the hands of the defendant, J. Bryan Smith, Special Deputy Banking Commissioner and Liquidating Agent of the Hargis Bank & Trust Company, and on the assets and property of every kind and character, which came into said defendant's hands and that the plaintiff has a lien upon all bonds, securities, notes, real estate, mortgages, and every species of property owned by said Hargis Bank & Trust Company and which came into defendant's hands to secure the payments of their demand hereinaboveasserted and that their lien is prior and superior to all other claims of all other persons and all depositors and all demands of every kind and character against said bank and the defendant.

Wherefore, plaintiffs pray that its lien be enforced for a judgment against the defendant for the sum of $6070.80, with interest thereon at the rate of 6% from January 1, 1930, until paid and that the same be adjudged as a preferred claim against the estate of the Hargis Bank and Trust Company and against all moneys, properties of every kind and character, choses in action and all the assets of said bank that came into the hands of the defendant; for their costs herein and for all proper relief.

[fol. 6] A. H. Patton, O. H. Pollard, Attorneys for Plaintiff.

*Duly sworn to by Sam Spicer. Jurat omitted in printing.*

EXHIBIT "A" TO PETITION

The United States of America, Treasury Department, Bureau of War Risk Insurance, Washington, D. C.

Certificate No. 2,253,023

Date insurance: Effective May 1, 1918.

This certifies That Letcher Spicer has applied for insurance in the amount of $10,000, payable in case of death or total permanent disability in monthly installments of $57.50.

Subject to the payment of the premiums required, this insurance is granted under the authority of an Act "amending" An act entitled An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department, approved September 2, 1914, and for other purposes, "approved October 6, 1917, and subject in all respects to the provisions of such Act, of any amendments thereto, and of all regulations thereunder, now in force or hereafter adopted, all of which together with the applications for this insurance, and the terms and conditions published under authority of the Act, shall constitute the contract.

[fol. 7] W. G. McAdoo, Secretary of the Treasury.
William C. DeLanoy, Director of the Bureau of War Risk Insurance.

Countersigned at Washington, D. C.
S. R. Robbins, Registrar. (Coat of Arms.)

Copy. Attest:
Cora M. Noble, Notary Public, Breathitt County.

On the reverse side of the foregoing petition appears the following endorsement: Filed in office Sept. 22, 1931; Summons and 1 copy issued thereon.

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IN CIRCUIT COURT OF BREATHITT COUNTY

[Title omitted]

MINUTE ENTRY—Oct. 23, 1931

Came this day defendant, J. Bryan Smith and filed general demurrer.

[fol. 8] In Circuit Court of Breathitt County

[Title omitted]

Demurrer—Filed Oct. 23, 1931

The defendant, J. Bryan Smith, Special Deputy Banking Commissioner in charge of Hargis Bank & Trust Company in liquidation, demurs generally to the plaintiff's petition because same does not state facts sufficient to constitute or support a cause of action against him.

W. L. Kash, Atty. for Defendant.

[File endorsement omitted.]

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In Circuit Court of Breathitt County

[Title omitted]

[fol. 9] Order Overruling Demurrer—Nov. 18, 1931

The demurrer of the defendant to the petition was heard by the court and the court being advised, it is ordered that said demurrer be overruled and the defendant excepts.

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In Circuit Court of Breathitt County

[Title omitted]

Minute Entry—Nov. 27, 1931

Came this day defendant — filed answer herein.

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In Circuit Court of Breathitt County

[Title omitted]

[fol. 10] Answer—Filed Nov. 27, 1931

The defendant, J. Bryan Smith, Special Deputy Banking Commissioner in charge of Hargis Bank & Trust Company

in Liquidation, for answer and defense to plaintiff's petition denies that under the laws of the United States, said alleged trust fund as set out in the petition is a preferred claim against all or any of the property or assets of every kind or any kind of the said Hargis Bank & Trust Company owned by it at the date that it closed its doors or that it owned at any other time, or that it is a preferred claim against all or any of the assets, notes, choses in action, money or real estate of said bank which came into the hands of this defendant, and denies that same is a preferred claim on the assets or property of every kind or character which came into said defendants hands, or that the plaintiff has a lien upon all or any bonds, securities, notes, real estate, mortgages or every or any species of property owned by said Hargis Bank & Trust Company, or which came into defendant's hands, to secure the payment of plaintiff's alleged demand or any of same, or that his alleged lien is prior or superior to all or any other claims of all or any other persons or all or any depositors or all demands of every kind or any kind or character against said bank or this defendant, or either of them.

The defendant for further answer herein states that at the time the said Hargis Bank & Trust Company closed its doors for business it was indebted to depositors and other creditors in the sum of approximately eight hundred thousand dollars; that about two hundred thousand dollars of said amount was owing to the Fifth-Third Union Trust Company of Cincinnati, Ohio, and to the National Bank of Kentucky, and to the First National Bank of Louisville, Kentucky, and that these banks had in their hands notes, mortgages and other securities of said Hargis Bank & [fol. 11] Trust Company as collateral security for the payment of said two hundred thousand dollars; that the notes, mortgages and other securities held by said bank as collateral security for the payment of said two hundred thousand dollars amounted to approximately the sum of four hundred thousand dollars, and that said banks have and will appropriate and apply enough of said collateral securities to pay the whole of said indebtedness, and that at the time said Hargis Bank & Trust Company closed its doors for business on the said 5 day of February, 1930, that it owed depositors and other creditors the sum of approxi-

mately six hundred thousand dollars, and that the property and assets then owned by it and which came into the hands of this defendant, with which to pay said depositors was and is not worth probably more than three hundred thousand dollars, and that therefore said bank will not pay said depositors and other creditors more than fifty per cent of their said deposits, and probably much less than fifty per cent of their said deposits, and that if plaintiff is permitted to recover the whole of his said deposit that it will materially lessen the amounts to be paid the said other depositors.

Defendant states that the plaintiff so deposited his said money in said Hargis Bank & Trust Company in the usual and customary way of other depositors; that he had no special agreement or understanding with said Hargis Bank & Trust Company by which said deposit was to be paid in case of insolvency to the exclusion of other depositors, and therefore plaintiff is only entitled to share ratably with the other depositors and creditors of said bank.

[fol. 12]

III

For further answer and defense herein defendant states that after the appointment of the said Sam Spicer as guardian of the said Letcher Spicer as alleged in the petition that the said Sam Spicer duly executed his bond as such guardian for the faithful performance his duties as such with G. R. Spicer and Ed Spicer as sureties; that said bond is dated 21 day of July 1924, and same was duly accepted and approved by the Judge of the Breathitt County Court, a certified copy of which is filed herewith marked exhibit "A".

Defendant states that said bond is a solvent bond and that the plaintiff is amply and fully protected by same; that whatever amount of said deposit is not paid by said insolvent bank in the usual course of business and in winding up its affairs, can be recovered on said bond, and therefore in that way plaintiff, Letcher Spicer can and will be fully and amply protected in the recovery of the whole of said amount sued for.

Wherefore defendant prays that plaintiff's petition be dismissed and that he take not-ing thereby, and he prays for his costs and all proper relief.

W. L. Kash, Atty. for Defendant.

[File endorsement omitted.]

[fol. 13] In Circuit Court of Breathitt County

[Title omitted]

Minute Entry—Dec. 1, 1931

Came the plaintiff and filed demurrer to defendant's Answer herein.

(The demurrer to the defendant's answer does not appear in the record.)

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In Circuit Court of Breathitt County

[Title omitted]

Minute Entry—Dec. 4, 1931

Came the defendant and filed Amended Answer herein.

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[fol. 14] In Circuit Court of Breathitt County

[Title omitted]

Amended Answer—Filed Dec. 24, 1931

The defendant, J. Bryan Smith, Special Deputy Banking Commissioner in charge of Hargis Bank & Trust Company, in Liquidation by leave of court amends his original petition herein and for amendment thereto states that a considera-l- portion of the money sued for by plaintiff, and at least half of same, came into the hands of the said Sam Spicer guardian and committee of Letcher Spicer, from the United States Government and the Bureau of War Risk Insurance on a ten thousand dollar insurance policy held by the said Letcher Spicer; that same was paid to the said Sam Spicer guardian and Committee in instalments of $57.50 per month; that said insurance policy was carried by the said Letcher Spicer as a soldier of the U. S. government under contract of insurance, and by regular monthly payments of premiums by the said insured.

II

For further amended answer herein the defendant states that in addition to the bond of Sam Spicer as guardian filed with the original answer herein that the said Sam Spicer as committee for the said Letcher Spicer on the 8 day of July, 1929, was required to and did execute a [fol. 15] bond in the penal sum of $20,000.00 which was approved by the Breathitt County Court with the Fidelity & Deposit Company of Maryland as surety for the faithful performance of his duties with the regard to the money sued for; that said bond is solvent and in full force and effect, and that same fully protects plaintiff in the recovery of any and all of said money. A certified copy of said bond is filed herewith marked Exhibit "B". Wherefore defendant prays as in his original answer and for all proper relief.

W. L. Kash, Atty. for Deft.

[File endorsement omitted.]

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Here follows demurrer to answer as amended, but there is nor order of record filing same.

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In Circuit Court of Breathitt County

[Title omitted]

Demurrer to Amended Answer—Filed Dec. 4, 1931

The plaintiff demurs to the amended answer and the answer of defendant as amended because said amended answer and answer as amended do not state facts sufficient to constitute a defense.

A. H. Patton, O. H. Pollard, Attorneys for Plaintiff.

[fol. 16] [File endorsement omitted.]

In Circuit Court of Breathitt County

Letcher Spicer, by Sam Spicer, Guardian, etc., Plaintiff,

vs.

J. Bryan Smith, Special Deputy Banking Commissioner, etc., Defendant

Judgment—Dec. 4, 1931

Came plaintiff and filed demurrer to the amended answer herein and to the answer as amended and same being heard and the court advised, it is ordered by the court that said demurrer be sustained and defendant excepts, and the demurrer to the petition having been overruled by the court, to which defendant excepts, and defendant having declined to plead further, this cause is submitted to the court for judgment, and the court being advised, it is adjudged that the plaintiff, *Letcher* Spicer, Guardian and Committee for said Letcher Spicer, recover of the defendant, J. Bryan Smith, Special Deputy Banking Commissioner and liquidating agent in charge of Hargis Bank & Trust Company, the sum of $6,070.80, with interest thereon at the rate of six per cent per annum from January 1st, 1930, until paid, and their cost herein expended.

[fol. 16½] It is further adjudged that the aforesaid judgment is a preferred claim against the estate of Hargis Bank & Trust Company and all monies and properties of every kind and character and assets of the said bank that came into the hands of the defendant as liquidating agent, and that plaintiff has a lien on all of said property and the entire assets of said bank, real, personal and mixed for this judgment and cost, and that said lien is prior and superior to all others, and that the same be enforced and that the defendant, J. Bryan Smith, Special deputy banking and liquidating agent of Hargis Bank and Trust Company, be and he is hereby directed to pay to the plaintiff the aforesaid sums, interest and cost herein adjudged plaintiff, and the defendant, J. Bryan Smith, special deputy banking commissioner, excepts and prays an appeal to the Court of Appeals, which is granted.

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[fol. 17] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 18] IN COURT OF APPEALS OF KENTUCKY

STATEMENT OF APPEAL

The correct names of all the parties appellant and appellee are stated above.

This is an appeal from a judgment of the Breathitt Circuit Court rendered at its October term, 1931, and may be found on pages 16 and 17 of the record.

An appeal was granted below, and appellee has entered his appearance hereto by motion to docket and advance and so no summons is necessary.

Jackson, Ky., April 11, 1932.

(Signed) W. L. Kash, Atty. for Appellant.

Mr. O. H. Pollard, Jackson, Ky., Atty. for Appellee.

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[fol. 18a] IN COURT OF APPEALS OF KENTUCKY

MINUTE ENTRY—April 15, 1932

Came parties, by counsel, and filed motion to docket, advance and submit; which motion is submitted.

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IN COURT OF APPEALS OF KENTUCKY

JOINT MOTION TO ADVANCE

The appellant and appellees move the court to docket this appeal for the Spring Term 1932 to advance and submit the same for hearing.

W. L. Kash, Attorney for Appellant. O. H. Pollard, Attorney for Appellees.

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IN COURT OF APPEALS OF KENTUCKY

ORDER OF SUBMISSION—April 19, 1932

The Court being sufficiently advised, the motion of parties to docket, advance and submit, is sustained and case ordered

docketed for the present term, advanced for hearing and submitted.

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[fol. 19] IN COURT OF APPEALS OF KENTUCKY

J. BRYAN SMITH, Special Deputy Banking Commissioner, etc., Appellant,

v.

LETCHER SPICER'S GUARDIAN AND COMMITTEE, Appellee

Appeal from a Judgment of the Breathitt Circuit Court

JUDGMENT—May 10, 1932

The Court being sufficiently advised, it seems to them the judgment herein is erroneous.

It is therefore considered that said judgment be reversed and cause remanded for proceedings not inconsistent with the opinion herein; which is ordered to be certified to said court.

It is further considered that the appellants recover of the appellee their costs herein expended.

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[fol. 20] IN COURT OF APPEALS OF KENTUCKY

J. BRYAN SMITH, Special Deputy Banking Commissioner, etc., Appellant,

—

LETCHER SPICER'S GUARDIAN & COMMITTEE, Appellee

Appeal from the Breathitt County Circuit Court

OPINION OF THE COURT BY COMMISSIONER CRYAL REVERSING—May 10, 1932

Sam Spicer, as guardian and committee for Letcher Spicer, recovered judgment in the Breathitt circuit court against J. Bryan Smith, special deputy banking commissioner and liquidating agent of the Hargis Bank and Trust

Company for the sum of $6,070.80, and his claim was adjudged to be preferred, prior and superior to all other claims against the bank. From that judgment the latter has appealed.

By undisputed allegations of the petition it is made to appear that in 1918 while in the military service of the United States in the World War, Letcher Spicer by reason of mental derangement become and has since been totally disabled and incompetent to manage his estate. Under orders of the Breathitt county court, Sam Spicer is the duly [fol. 21] appointed, qualified and acting guardian and committee for the incompetent soldier.

For many years prior to May 5, 1930, the Hargis Bank and Trust Company conducted a general banking business at Jackson in Breathitt county, but because of insolvency (Commonwealth ex rel. etc. v. Hargis Bank and Trust Company, 233 Ky. 801, 26 S. W. (2d) 1045) it was on that date taken over by the State Banking Department and placed in the charge of J. Bryan Smith, special deputy banking commissioner for the purpose of liquidation. At the time the bank closed and ceased to transact business, Sam Spicer, as guardian and committee, had on deposit the sum of $6070.80 which had been paid to him by the United States as compensation and war risk insurance due his ward, Letcher Spicer. The war risk insurance had been paid in monthly installments of $57.50 under the permanent disability provision.

The answer controverted only that part of the petition alleging that the claim of plaintiff was preferred, but attempted to set up certain affirmative defenses which it is unnecessary to enumerate since they are not material to a proper decision of this appeal. The chancellor sustained a demurrer to the answer but overruled a demurrer to the petition and defendants declining to further plead, entered judgment for plaintiff as above indicated.

At the outset it may be noted that appellee does not cite any statute of this state or any decision of its courts as sustaining his position or supporting the chancellor's finding, and in fact, none can be found. On the other hand, it has been held by this court that a guardian or other fiduciary who deposits trust funds in a bank upon interest becomes merely a creditor of the bank and is not entitled to priority or preference as against general creditors in

the distribution of its assets when it becomes insolvent. Fidelity & Casualty Co. of N. Y. v. Farmers & Merchants Bank, 223 Ky. 32, 2 S. W. (2d) 1048; New Farmers Bank [fol. 22] Trustee v. Cockrell, Receiver, 106 Ky. 578, 51 S. W. (2d) 2, 21 Ky. Law Rep. 177. It follows therefore that if authority for giving preference to claims of this or like character is to be found, it must be in Federal Statutes or in cases from other jurisdictions.

A careful examination of the Statutes of the United States fails to reveal any express provision authorizing the preference given to this claim and none has been pointed out, although the brief prepared by eminent counsel for appellee discloses extensive research and study of authorities. Furthermore we find nothing in the Acts of Congress relating to adjusted compensation and war risk insurance from which to draw a reasonable inference that such preference is warranted or was intended. There are, however, a number of cases from courts of other states that are in agreement with the chancellor's finding. See State ex. rel. etc. v. Security Bank of Creighton, (Neb.) 237 N. W. 620; State ex rel. etc. v. First State Bank of Pawnee (Neb.) 237 N. W. 623; Butler v. Cantley, Com'r of Finance, (Mo) 47 S. W. (2d) 258, and authorities cited in those cases. Some of those cases are cited in brief for appellee and no doubt were relied on and had a determining effect in the court below. But in none of them is it claimed that either the adjusted compensation or war risk insurance acts expressly give preference or priority to funds held by fiduciaries for incompetent soldiers. Apparently they are premised on the theory that funds derived under these acts are moneys of the United States until they actually reach the hands of the soldier himself, and when deposited to the credit of a guardian or committee in a bank which proves to be insolvent are entitled to preference under section 3466 Revised Statutes of the United States (31 U. S. C. A. Sec. 191) which reads:

[fol. 23] "Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to

cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed."

The opinion in Butler v. Cantley, supra, refers to the purpose as expressed in the Federal Statutes to give protection to those enlisted in military or naval service, and to the safeguards thrown around funds payable under the acts for the benefit of veterans and their dependents, such as exemption from attachment for debt, from taxation etc. and to the provision for escheat to the United States in certain circumstances; and reasoning from these provisions, reaches the conclusion that the spirit and purpose of the Acts is to retain in the federal government the ownership and control of such funds until they actually come into the hands of the soldier or his dependents as the case may be. Other cases follow the same line of reasoning to the same conclusion and some of these set out the provisions of the acts authorizing the withholding of payments to the guardian when warranted by circumstances, and the penalty prescribed for embezzlement of funds by a guardian. They all in effect hold that the guardian is merely an agent of the government, his possession of the funds being in fact possession by the United States.

[fol. 24] As supporting the theory that a fund deposited by the guardian of a soldier is money of the United States, the case of U. S. Fidelity and Guaranty Co. v. Bramwell, 295 Fed. 331 is cited. But in that case the United States through the superintendent of the Kalmath Indian Reservation caused funds derived from the sale, rent, etc., of tribal lands to be deposited in a bank, and the Guaranty Co. executed and delivered to the United States a bond securing the deposit. Because of insolvency of the bank, the Guaranty Company paid the amount of the deposit to the United States. Under a statute subrogating the surety who pays money on a bond in such instances to all rights of the United States, it was held that the Guaranty Company was entitled to payment of its claim in preference to general creditors. However, in the opinion, it is pointed out that both by the terms of the deposit and the provision of the bond, the debt was due from the bank to the United

States and that under treaty with the Indians and acts of Congress, the United States is guardian of the Indians on the reservation, and as such has the management of their affairs and the collection and disbursement of funds intended for their benefit. Obviously that case has no application here and furnishes no basis for the contention that the debt in question was due from the Hargis Bank & Trust Company to the United States and therefore entitled to preference under the Federal Statutes (R. S. Sec. 3466). In that case the United States was the guardian, deposited the fund and required a bond as security therefor, while in the instant case, an individual acting under orders of the state court is the guardian and deposited the ward's funds in the bank in his name, and neither the guardian nor the bank has been required to execute bond to the United States to secure the deposit. Unquestionably the money in [fol. 25] that case was money of the United States and as such was entitled to preference by virtue of section 3466, supra, and under the Acts of Congress relating to the administration of the affairs of the Indians, the United States was authorized to sue and enforce payment of the deposit.

As we view the matter the question whether this fund was money of the United States, the one question on which the decision of this case must turn, may be determined by the application of a simple though decisive and infallible test, and strained construction and doubtful inferences and implications must give way to this test. If the payment by the United States to the guardian was to the extent thereof a complete and final discharge of its debt and liability to the soldier, then the funds passed from the possession and control of the government and became the estate of the ward. To hold otherwise would in effect hold that in the event of insolvency of the guardian and his surety, the United States would be required to again pay so much of the fund as did not reach the hands of the soldier.

In this state, as in most if not all other jurisdictions, a guardian has the custody and control of the personal estate of his ward and may collect and receive debts and obligations due the ward, (Ky. Statutes, Sec. 2030) and payment to him will operate as a complete discharge of the debtor. Maclay v. Equitable Life Assurance Society, 152 U. S. 499; Taylor v. Berniss, 110 U. S. 42; 12 R. C. L. 1125; 21 R. C. L. 29; 28 C. J. 1130, 1131, and cases cited therein.

The provisions in the Acts of Congress relating to compensation and war risk insurance authorizing withholding payments and for escheat in some circumstances, clearly [fol. 26] applies to money due but which has not been paid to the soldier or to his guardian or committee, and there is no provision whereby funds may be repossessed or escheated by the United States after payment has been made. These acts specifically authorize payments to the guardian appointed under laws of the state of the residence of the claimant. Manifestly it was the intent of Congress that payment to a guardian would be payment to the ward and would operate as a discharge of the government's obligation to the latter and the acts have been so construed by those charged with their administration since payments may be and are made to guardians without requiring bond to be executed to the United States.

We see no escape from the conclusion that the United States parted with possession and control of funds paid to the guardian and was thereby released and discharged of liability to the soldier; therefore the debt of the bank is due to the estate of the incompetent and as such is controlled solely by the laws of this state with respect to preference or priority, and it follows that the court erred in overruling the demurrer to the petition.

Judgment reversed for proceedings in conformity with this opinion.

W. L. Kash, Jackson, Ky., Attorney for Appellant.
O. H. Pollard, Jackson, Ky., Attorney for Appellee.

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[fol. 27] In Court of Appeals of Kentucky

Minute Entry—June 7, 1932

Came appellant, by counsel, and filed petition for rehearing, and notice.

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[fols. 28-30] Petition for Rehearing, Covering Four Pages, Filed June 7, 1932, Omitted from This Print. It Was Denied and Nothing More by Order of June 21, 1932.

[fol. 31] IN COURT OF APPEALS OF KENTUCKY

MINUTE ENTRY—June 14, 1932

Came appellant, by counsel, and filed Response to appellee's petition for rehearing, and notice.

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[fol. 32] Response to petition for rehearing omitted in printing.

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[fols. 33 & 34] IN COURT OF APPEALS OF KENTUCKY

ORDER OVERRULING PETITION FOR REHEARING—June 21, 1932

The Court being sufficiently advised, the petition for rehearing is overruled.

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[fol. 35] IN COURT OF APPEALS OF KENTUCKY

[Title Omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Aug. 23, 1932

To the Clerk of the Court of Appeals of Kentucky:

Please prepare and certify forthwith a complete transcript of the entire record in the above entitled cause on appeal to the Supreme Court of the United States, except briefs and orders filing processes. You will include in the transcript order reversing the case and order overruling the petition for rehearing.

O. H. Pollard, Attorney for Appellants.

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[fol. 36] Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 24, 1932

The petition herein for a writ of certiorari to the Court of Appeals of the State of Kentucky is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.